

From: <Diana_Whittington@fws.gov>
To: "Wayne Hedberg" <waynehedberg@utah.gov>
Date: 9/21/2005 5:03:29 PM
Subject: Re: West Ridge Mine - addition of State Leases Modification

I had planned on sending an e-mail, but would you prefer an official letter?

Since this proposal is not connected to a federal action, there is no need to conduct section 7 consultation. However, I do appreciate your program's efforts to conserve threatened and endangered species, and believe that your evaluation process helps you to avoid take of listed species under section 9 of the Endangered Species Act, which applies to all persons, not just federal entities.

As such, the provisions for T&E species in general and for the bald eagle in the Technical Memorandum for the West Ridge Mine provide conservation measures for listed species that will help avoid take.

For clarity, I recommend you revise the discussion on depletions to the Colorado River system to reflect the following:

All depletions associated with a federal action require consultation

Depletions of 100 acre feet or less (small depletion) need to undergo consultation and be reported (by the local FWS Ecological

Services Office - us) to the Colorado River Fish Recovery Implementation Program (Program).

Depletions over 100 acre feet (large depletion) need to undergo consultation, be reported, and make a payment (set annually) to the Program.

As an FYI, here are the kinds of things our office is required to report, on a quarterly basis:

For small depletions (100 acre-feet or less):

Number of consultations

Total acre-feet consulted on

For large depletions (greater than 100 acre-feet):

Agency

Project name

Applicant name and address

State

River

BO final date

Acre-feet of new depletion

Acre-feet of historic depletion

One other thing to store away for future discussion is the take prohibition of section 9 of the ESA. Since your program is so proactive, I think we'll be able to avoid it, but if your analyses ever predict that it may be

unavoidable on private or state parcels, we should get together ASAP to start working on a Habitat Conservation Plan (HCP).

Hope this is what you need.

Take care,

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"In God we trust, all others need data."